

**FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY
REGULATORY ACTION**

Emergency Action to Amend Title 14, Chapter 3, Article 3, Section 7.50(b)(5)(E) and 7.50(b)(156)(H)

Re: Amended Sport Fishing Regulations for a portion of the Mainstem Sacramento River and the mouth of the American River to Protect Winter-run Chinook Salmon

I. Statement of Facts Constituting Need for Emergency Regulatory Action:

Sacramento River winter-run Chinook salmon were listed as endangered by the Fish and Game Commission (Commission) on September 22, 1989. The National Marine Fisheries Service listed the run as endangered under the federal Endangered Species Act in February 1994. Although the population has increased in recent years, the winter-run Chinook population remains well below levels defined for recovery of the run (Department of Fish and Game, *Sacramento River Winter-run Chinook Salmon, Biennial Report to the Fish and Game Commission*, March 2002).

Current angling regulations adopted by the Commission for the mainstem Sacramento River, which have been in effect since 1990, were designed to prevent harvest of upstream migrating winter-run Chinook and other depleted stocks. Regulations consist of time and area closures, gear restrictions, and zero bag limits. Existing regulations prohibit the retention of Chinook salmon in the Sacramento River from the Deschutes Road Bridge (near Redding) to Bend Bridge (approximately 5 miles upstream from Red Bluff) from January 15 through July 31, and from Bend Bridge to the Carquinez Bridge from January 15 through July 15. To facilitate enforcement of angling regulations on the lower American River, existing regulations also prohibit the retention of Chinook salmon in the American River from the Jibboom Street Bridge to the river mouth from January 15 through July 15, the same no-retention period as on the mainstem Sacramento River at the American River mouth. Based on the best available data at the time these regulations were implemented, the no-retention periods were expected to cover the entire period when adult winter-run would occur in these areas.

However, recent data from the Department's Central Valley Salmon and Steelhead Inland Harvest Monitoring Project indicate that a relatively high inland sport harvest of winter-run Chinook salmon may have occurred in late December 2000 and early January 2001, immediately prior to the current no-retention period, in the Bend Bridge to Carquinez Bridge area. These data are based on recoveries of coded-wire tagged winter-run Chinook from the U.S. Fish and Wildlife Service (USFWS) artificial propagation program, as described below.

An artificial propagation program for winter-run was initiated by the USFWS at Coleman National Fish Hatchery (CNFH) in 1989. In 1998, the USFWS transferred

propagation of winter-run Chinook to Livingston Stone National Fish Hatchery on the mainstem Sacramento River below Keswick Dam. Beginning with the 1998 brood year, significant numbers of juvenile winter-run were reared and released into the upper Sacramento River. All hatchery-reared winter-run are externally marked with an adipose fin clip and are coded-wire tagged (CWT). Recoveries of coded-wire tagged adult fish in trapping operations, spawning surveys, and ocean and inland harvest monitoring programs provide valuable data for management of winter-run Chinook salmon.

The Department's Central Valley Salmon and Steelhead Harvest Monitoring Project was initiated in 1998. This program is designed as a long-term monitoring program to develop annual estimates of total in-river harvest of sport fish from the Sacramento River and major tributaries. Several coded-wire tagged winter-run Chinook from the 1998 brood year (the first year of significant propagation releases) were recovered as three-year-old adults in late December 2000 and the first two weeks of January 2001 in the Harvest Monitoring Project. The program applies expansion factors for fish observed in the survey, based on estimates for time and area not sampled. The winter-run tag recoveries from this survey in 2000/2001 and associated expansion factors were:

Brood Year	Coded-Wire Tag Code	Recovery Date	River Mile of Recovery (Sacramento River)	Approximate Recovery Location	Creel Survey Expansion Factor
1998	501020907	12/28/2000	RM 137	Colusa	8.2
1998	501020811	12/29/2000	RM 21	Isleton	13.7
1998	501020904	1/4/2001	Unknown	Sacramento River	1*
1998	501020906	1/6/2001	RM 178	Butte City	22.4
1998	501020906	1/6/2001	RM 183	Ord Ferry	22.4
1998	501020908	1/7/2001	RM 89	Knights Landing	7.9
1998	501020905	1/7/2001	RM 89	Knights Landing	7.9
1998	501020908	1/14/2001	RM 209	Hamilton City	22.4

* Fish returned by angler to USFWS – Red Bluff Office, no expansion factor applied

Estimated total hatchery-reared winter-run harvested = 106

The estimated total number of hatchery-reared winter-run Chinook harvested in the inland sport fishery in 2000/2001 is 106. To determine the proportion of hatchery-reared fish that were harvested in 2000/2001, then, the ratio of expanded CWT recoveries in the river harvest to the total estimated number of CWTs in the 2000/2001 escapement was calculated:

Estimated CWTs in the inland sport harvest =	106
Estimated CWTs from age 2 fish in winter-run carcass survey =	108
Estimated CWTs from age 3 fish in winter-run carcass survey =	309

Estimated CWTs in Keswick trap operations = 12

The proportion of hatchery-reared winter-run in the 2000/2001 escapement that were harvested in the inland fishery, therefore, is estimated as:

$$\frac{106}{106 + 108 + 309 + 12} = .20$$

Coded-wire tagged hatchery-reared winter-run can be considered surrogates for naturally produced winter-run, assuming that the hatchery and naturally-produced fish have similar run timing and similar vulnerability to inland sport harvest. The proportion of the total winter-run escapement (hatchery and naturally-produced) in 2000/2001 that was harvested in the inland fishery is therefore also estimated at 20%.

In December 2001 and January 2002, no coded-wire tagged winter-run Chinook were recovered in the inland harvest monitoring program. However, the inland harvest program was sampling with reduced effort in 2001/2002. In addition, far fewer fish from the 1999 brood year, returning as three year old fish in 2001/2002, were coded-wire tagged than in the 1998 brood year (154,000 fish in BY1998 compared to 32,000 fish in BY1999).

In light of the data described above, further protective measures for winter-run Chinook are warranted. Data indicate that changing the timing of the no-retention period for salmon in the Sacramento River may significantly reduce or eliminate inland harvest of winter-run Chinook, while allowing harvest of other Chinook salmon runs. Incidental take of winter-run Chinook salmon in the inland sport harvest is not currently authorized by the National Marine Fisheries Service under Section 10 of the Endangered Species Act, because it has been assumed that the current no-retention periods for salmon required by the sport angling regulations provided adequate protection for winter-run Chinook.

The proposed emergency regulatory action would prohibit the retention of Chinook salmon in the Sacramento River from Bend Bridge to the Carquinez Bridge from January 1 (formerly January 15) through July 15. Data from the inland harvest monitoring program, described above, indicate that prohibiting retention of Chinook salmon in these areas beginning on January 1 would significantly reduce or eliminate inland harvest of winter-run Chinook. To facilitate enforcement of angling regulations in the lower American River, the proposed regulatory action would also prohibit the retention of Chinook salmon in the American River from the Jibboom Street Bridge to the river mouth from January 1 (formerly January 15) through July 15, the same no-retention period as the mainstem Sacramento River in that area.

Potential impacts of the proposed regulation change on the angling public were analyzed by evaluating the angling effort data from the Central Valley angler survey for January 1999 and 2000. In the month of January (January 1 – 14), fishing effort

(number of angler hours) was relatively low in the Carquinez Bridge to Red Bluff area compared to other months when retention of salmon is allowed (Figure 1). The highest effort for Chinook salmon occurred in September and October of each year, for fall-run Chinook. The proposed action extending the no-retention period for Chinook salmon to January 1, however, would have eliminated fishing opportunity (angler-hours) for Chinook salmon in this area in 1999 and 2000 as follows:

January 1 - 14	
Total Angler Hours for Chinook Salmon – Carquinez Bridge to Red Bluff	
1999	6,768
2000	8,716

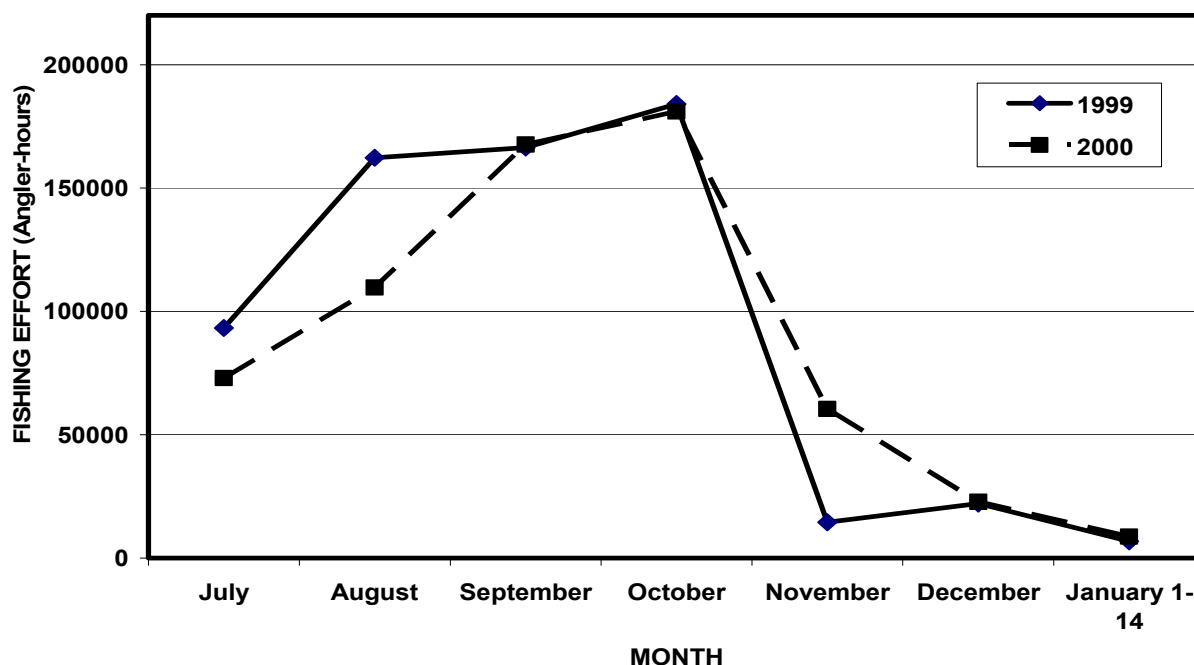


Figure 1. Estimated fishing effort (total number of angler hours) for Chinook salmon in the Sacramento River from Carquinez Bridge to Red Bluff (Central Valley Salmon and Steelhead Harvest Monitoring Project, 1999 and 2000 data).

With the proposed action, some of this fishing effort may be shifted to the reach upstream from Bend Bridge (near Red Bluff), which would not be affected by the proposed action. Angling for resident and steelhead trout in the Sacramento River would also not be affected by this action.

The Fish and Game Commission (Commission) is the decision-making body that adopts angling regulations pursuant to Fish and Game Code Section 200 et seq. For the reasons described above, emergency regulations to restrict harvest of salmon in the mainstem Sacramento River are necessary to protect the endangered winter-run Chinook salmon.

II. Alternatives

The Commission has determined that no alternative considered would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

III. Economic Impact of Proposed Regulatory Action:

The Commission has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and has made the following determinations relative to the required statutory categories:

- (a) Significant Adverse Economic Impact on Businesses:
Several local fishing guide services for resident trout, steelhead trout, and Chinook salmon operate in the Bay-Delta and the Sacramento River. These businesses may be impacted by the increased no-retention period for Chinook salmon proposed in this action. However, analysis in Section 1 indicates that angling effort is relatively low in the January 1-14 period. Fishing regulations on the Sacramento River upstream from Bend Bridge would not be affected by the proposed action; regulations for resident and steelhead trout would also not be affected.
- (b) Economic Impact on Private Persons: Anglers fishing from private boats and shore in the Sacramento River from Carquinez Bridge to Bend Bridge will no longer be able to retain salmon caught from January 1 through January 14 each year. However, analysis in Section 1 indicates that angling effort is relatively low in the January 1-14 period.
- (c) Adversely Impact the Ability of California Businesses to Compete with Businesses in Other States: None.
- (d) Impact the Creation or Elimination of Jobs or Businesses or the Expansion of Businesses in California: None.
- (e) Fiscal Impact on Public Agencies, Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (f) Involve Nondiscretionary Costs/Savings to Local Agencies: None.

- (g) Mandate Programs on Local Agencies or School Districts: None.
- (h) Impose Costs to Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (i) Affect Housing Costs: None.

IV. Plain English Policy Statement:

The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Sections 200, 205, and 240 of the Fish and Game Code and to implement, interpret, or make specific Sections 200, 205, and 240 of said Code.

The sections below describe laws relating to the regulation of inland sport harvest, the effect of these emergency regulations, a description of related federal law, and a policy statement overview.

A. Laws Related to the Emergency Regulations

Fish and Game Code Laws:

Section 200 provides the Commission the power to regulate the taking or possession of birds, mammals, fish, etc.

Section 205 provides the Commission the power to establish, change or abolish bag and possession limits.

Section 240 provides the Commission the power to adopt an emergency regulation or order of repeal if the adoption of the regulation or order is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish.

B. Effect of the Emergency Regulations

The proposed emergency regulations change Title 14, Chapter 3, Article 3, Section 7.50(b)(5)(E) as follows:

Prohibit the retention of Chinook salmon in the American River (Sacramento Co.) from the Jibboom Street Bridge to the mouth from January 1 (formerly January 15) through July 15.

The proposed emergency regulations change Title 14, Chapter 3, Article 3, Section 7.50(b)(156)(H) as follows:

Prohibit the retention of Chinook salmon in the Sacramento River from Bend Bridge to the Carquinez Bridge from January 1 (formerly January 15) through July 15.

C. Existing, Comparable Federal Regulation or Statute

None.

D. Policy Statement Overview

The objective of these regulations is to significantly reduce or eliminate inland sport harvest of the endangered Sacramento River winter-run Chinook salmon.

VI. Section 240 Finding:

Pursuant to the authority vested in it by the Fish and Game Code Section 240(a)(1), and for the reasons set forth above in the "Statement of Facts Constituting Need for Emergency Regulatory Action," the Commission expressly finds that adoption of these regulations is necessary for the immediate protection of Sacramento River winter-run Chinook salmon. The Commission specifically finds that the adoption of these regulations will significantly reduce or eliminate the inland sport harvest of winter-run Chinook.

The Commission has complied with the special statutory requirements for its emergency regulations found at Section 240, FGC. A public hearing on these regulations was held on October 24, 2002, and the above finding that these regulations are necessary for the immediate protection of fish meets the requirements of Section 240.

Informative Digest (Plain English Overview)

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However, recent data from the Department's Central Valley Salmon and Steelhead Harvest Monitoring Project indicate that a relatively high inland sport harvest of winter-run Chinook salmon may have occurred in late December 2000 and early January 2001, immediately prior to the current no-retention period.

The proposed emergency regulatory action would prohibit the retention of Chinook salmon in the Sacramento River from Bend Bridge to the Carquinez Bridge from January 1 (formerly January 15) through July 15, and in the American River from the Jibboom Street Bridge to the mouth from January 1 (formerly January 15) through July 15. Data from the Department's Central Valley harvest monitoring project indicate that prohibiting retention of Chinook salmon in these areas beginning on January 1 would significantly reduce or eliminate inland sport harvest of endangered winter-run Chinook salmon.